



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 19, 1993

Mr. Tony Cobos
Staff Attorney
Texas State Board of Medical Examiners
P. O. Box 149134
Austin, Texas 78714-9134

OR93-031

Dear Mr. Cobos:

A Georgia physician applied for, and was denied, a license to practice medicine in Texas by reciprocal agreement. The Texas State Board of Medical Examiners (the board) received a request under the Texas Open Records Act, V.T.C.S. article 6252-17a, for the file upon which the denial was based. The board provided the physician a statement explaining the reasons his application for licensure was denied. You seek to withhold under section 3(a)(1) of the Open Records Act investigatory material the board received from the state of Georgia, where the physician is licensed to practice medicine. We have assigned your file on this matter an identification number, ID# 17521.

Section 3(a)(1) of the Open Records Act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You assert that section 3.01(h) of the Medical Practice Act, V.T.C.S. article 4495b (the act), provides procedures for the disclosure of information to applicants for licensure by reciprocity and that this provision controls the question of whether the requested information must be released to the physician. You also assert that section 4.05(d) of the act makes the requested information confidential. Counsel for the physician maintains that another provision in the act, section 3.05(d), governs this question and entitles the physician to the requested information.

We have concluded that section 3.01(h) governs the disclosure of information to applicants for licensure by reciprocity and that section 3.05(d) controls the disclosure of information to applicants for licensure by examination. We find that section 3.01(h) makes confidential the information at issue here. Accordingly, we have concluded that you must withhold the requested information under sections 3.01(h) of the act and section 3(a)(1) of the Open Records Act.

Section 3.01(h) of the act, provides the due process requirements required of the board in regard to applicants for licensure by reciprocity or by examination and states in part as follows:

The secretary-treasurer or the executive director shall review each application for licensure by examination or reciprocity and shall recommend to the board all applicants eligible for licensure. . . . *A physician whose application for licensure is denied by the board shall receive a written statement, upon request, containing the reasons for the board's action. All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Open Records Law.* The board may disclose such reports to appropriate licensing authorities in other states upon request. [Emphasis added.]

The emphasized portion of section 3.01(h) controls the extent to which application information may be released to an applicant for licensure by reciprocity. The first sentence of the emphasized portion of section 3.01(h) entitles a "physician" whose application for licensure is denied to a written statement, upon request, containing the reasons for the board's denial. The term, "physician" refers to an applicant for licensure by reciprocity: a person who applies to practice medicine in Texas by reciprocal agreement is already licensed to practice medicine by examination in another state or Canadian province, and need not take an examination to practice medicine in Texas. See V.T.C.S. art. 4495b, § 3.03(a), (b)(2). Under the act, one who practices medicine is a "physician." See *id* § 1.03(11) (equating "practitioner of medicine" and "practice of medicine" with "physician").¹

The next sentence in the highlighted portion of section 3.01(h) states that "[a]ll reports received or gathered by the board on *each applicant* are confidential." In other words, this portion of section 3.01(h) makes confidential all reports the board collects on each person who applies for licensure. Thus, under this provision, the only information the board must furnish a physician whose application for licensure by reciprocity was denied is a written statement containing the reasons for the denial.

The requested information is information the board received regarding the requestor's application for licensure by reciprocity. We have determined that under the terms of section 3.01(h) such information is confidential and not subject to disclosure under the Open Records Act. You must therefore withhold the requested information based on section 3(a)(1) of the Open Records Act.

¹As used in section 3.01(h), "physician" cannot mean an applicant for licensure by examination. A person who applies to practice medicine by examination has not yet qualified as a physician. See *id* §§ 1.03 (defining "physician" as synonymous with "practice of medicine"), 3.05(c) (requiring all applicants for a license to practice medicine not otherwise licensed to pass examination). Compare *id* § 3.03(a) (stating board may grant a license by reciprocity to a "physician") with § 3.05(c) (requiring all "applicants" for the practice of medicine to pass an examination by the board).

You also assert that the requested information is made confidential by section 4.05(d) of the act. Because we have determined that section 3.01(h) deems this information confidential, we need not address your claims under section 4.05(d).

Section 3.05(d) of the Medical Practice Act provides that:

Examination questions that may be used in the future, examinations other than the one taken by the person requesting it, and deliberations and records relating to the professional character and fitness of applicants are exempted from the Open Meetings Law and the Open Records Law. *The records, however, shall be disclosed to individual applicants upon written request, unless the person supplying the information to the board requests that it not be disclosed.* [Emphasis added.]

Counsel for the physician suggests that this provision in the act, rather than section 3.01(h), controls the question of whether the requested information must be disclosed. If that is so, then the board must release copies of any records relating to his professional character and fitness.² However, we do not agree that section 3.05(d) controls this question. We think section 3.05(d) applies only to records of applicants for licensure by examination, and does not apply to records of applicants for licensure by reciprocity which are at issue here.

The issue is what is the meaning of "applicants" in section 3.05(d). Since "applicants" is not qualified in anyway in section 3.05(d), counsel for the physician would read the word to mean applicants for licensure by reciprocity. But such a reading isolates the word from the rest of the act.

A fundamental rule of statutory construction requires that a statute be construed as a whole. *Morrison v. Chan* 699 S.W.2d 205 (Tex. 1985). Each part of a statute is to be considered in connection with every other part. *Black v. American Bankers Ins. Co.*, 478 S.W.2d 434 (Tex. 1972). A provision will not be given a meaning out of harmony with the purposes of an act, even though it is susceptible of such a construction if standing alone. *State v. Terrell*, 588 S.W.2d 784 (Tex. 1979).

Considering the act as a whole, we think the legislature clearly intended "applicant" in section 3.05(d) to refer only to applicants by examination. Each subsection of section 3.05 sets forth procedures for licensure by examination. See V.T.C.S. art. 4495b, § 3.05(a) - (f). Additionally, subsection (d) of section 3.05 lists three kinds of information which are exempt from the Open Records Act: examination questions that may be used in the future, examinations other than the one taken by the person requesting it, and deliberations and records relating to the professional character and fitness of

²We found no evidence in the file that the Composite State Board of Medical Examiners of the State of Georgia, which supplied the information at issue, requested that the information not be disclosed.

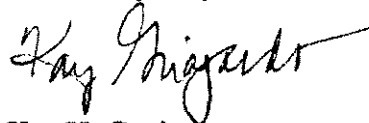
applicants. Thus, the context in which "applicant" appears -- in a section that deals exclusively with procedures for licensure by examination, and in a subsection listing two other kinds of information, both of which pertain to examination information -- shows that the legislature intended "applicant" in section 3.05(d) to mean only an applicant for licensure by examination. This conclusion is also supported by the fact that another section in the act covers the procedures for licensure by reciprocity. *See id.* § 3.03.

To insist that "applicant" in section 3.05(d) includes applicants for licensure by reciprocity would give the provision a meaning that conflicts with section 3.01(h). As determined above, section 3.01(h) controls the extent to which information about an application for licensure by reciprocity may be released to the applicant: the board must supply the applicant with a statement of the reasons for the denial, but must not disclose "all reports" the board receives about the applicant. Section 3.05(d), which allows the release of reports about an applicant's professional character and fitness, cannot be read to apply to applicants for licensure by reciprocity; such a reading would conflict with the confidentiality provision of section 3.01(h).³ *See, e.g., Black* 478 S.W.2d at 437.

Because section 3.05(d) applies solely to an applicant for licensure by examination, that provision entitles only an applicant for licensure by examination to records relating to the applicant's professional character and fitness, unless a person supplying the information requests that it not be disclosed. This provision does not authorize the disclosure of any records pertaining to an applicant for licensure by reciprocal agreement.

Because the plain language of the statute and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-031.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/lmm

Ref.: ID# 17521
ID# 17577

³We are assuming that the "records relating to the professional character and fitness of an applicant" in section 3.05(d) will always fit under the broader category of "all reports received or gathered by the board on each applicant" of section 3.01(h).

cc: Eusebio J. Fernandez, M.D.
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